

## REMARKS/ARGUMENTS

### Summary of the Office Action

Claims 1-9, 11, and 13-27 are pending.

Claims 1, 3, 11, 16, 18, 20-23, and 25 were rejected under 35 U.S.C. § 103(a) as being anticipated by Geiger U.S. Patent Publication No. 2002/0101367 (hereinafter "Geiger").

Claims 4, 19, 24, and 26 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims.

### Summary of Applicants' Amendments

Applicants have amended claims 4, 19, 24, and 26 to be in independent form.

Applicants have amended claims 1-9, 11, 16-19, 24, 26, and 27 in order to expedite prosecution.

Applicants have added new claims 28-43 in order to more particularly point out and distinctly claim the subject matter that applicants regard as the invention.

The Examiner's rejections are respectfully traversed. Applicants reserve the right to pursue subject matter lost by any of the amendments in a continuation or divisional application.

### Applicant's Reply to the 35 U.S.C. § 103(a) Rejections

Claims 1, 3, 11, 16, 18, 20-23, and 25 were rejected under 35 U.S.C. § 103(a) as being anticipated by Geiger.

Particularly, the Examiner stated that Geiger:

"[fails] to show that the compression algorithm is tracked and if the first algorithm does not satisfy the throughput, switching or selecting the second algorithm ... the parallel algorithm method of Geiger

... would result in selecting one of the algorithms..."  
(Office Action, page 3).

With respect to claims 1, 3, and 16, however, Geiger does not show or suggest, for example, tracking the throughput of a data processing system to determine if the first compression rate provides a throughput that meets a predetermined threshold. Similarly, Geiger does show or suggest using a different routine when the tracked throughput does not meet the throughput threshold. Accordingly, Geiger's alleged result does not show or suggest - in any way, shape, or form - applicant's invention of using a routine based on tracked throughput.

With respect to claims 11, however, Geiger does not show or suggest tracking throughput and generating a control signal to select a compression routine based on the throughput and determining that the throughput falls below a predetermined throughput threshold.

With respect to claims 18, 20-23, 25, however, Geiger does not show or suggest tracking the throughput of the communications channel and, when the tracked throughput does not meet the predetermined throughput threshold, using a second compression algorithm to compress data at a second compression rate to provide second compressed data to the communications channel.

However, solely in order to expedite prosecution, applicant has amended the rejected claims to include subject matter suggested as patentable by the Examiner.

Particularly, applicant has amended claims 1, 3, 11, 16 and 18 to include tracking throughput by tracking a number of requests.

Accordingly, applicant respectfully submits that applicant's invention of claims 1, 3, 11, 16, and 18, and any claims dependent therefrom, are in condition for allowance.

#### New claims 28-31

New claims 28-31 are similar to patentable claims 1, 3, 11, and 16, respectively. New claims 28-31 include tracking throughput by tracking a number of requests. Accordingly, applicant respectfully submits that applicant's invention of new claims 28-31 are in condition for allowance.

#### New Claims 32-43

As shown above, claims 1-5 are patentable. Claim 8 was previously allowed. Each one of new claims 32-43 depends from one of claims 1-5 and 8. Accordingly, each one of new claims 32-43 are patentable for depending from a patentable independent claim.

#### Official Notice

The Examiner appears to be rejecting claims in view of Official Notice. For rejections under 35 U.S.C. § 103(a), the Examiner has the burden of showing each and every element of applicant's invention in the prior art combination. MPEP § 2144.03 requires that the facts of which notice are being taken be capable of instant and unquestionable demonstration as being well known in the art. See *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970). Applicant believes that the "facts" of which the Examiner may have taken Official Notice do not meet that standard, and invoke his right under MPEP § 2144.03 to have the Examiner provide documentary proof that those facts are actually well known.

The Examiner "cannot simply reach conclusions based on its own understanding or experience - or on its assessment of what would be basic knowledge or common sense. Rather, ... [the Examiner] ... must point to some concrete evidence in the record in support of these findings." *In re Zurko*, 258 F.3d at 1385, 59 USPQ2d at 1697 (Fed. Cir. 2001). If the Examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth factual statements and explanation to such a finding. See MPEP 2144.03(c). Accordingly, for any rejection in view of Official Notice, applicant requests that the Examiner provide a specific reference.

#### Conclusion

The Director is hereby authorized to charge any fees due, or credit any overpayment of the same, in conjunction with this filing to Deposit Account No. 06-1075.

In light of the foregoing, applicant respectfully submits that this application, including the pending claims, is in condition for allowance. A favorable action is respectfully requested.

Respectfully submitted,

/Richard Allison/

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